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February 5, 1999

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BY MESSENGER

Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: CC Docket No. 91-142

Dear Ms. Salas:

On behalf of Thomas Domencich, the Committee for a Fair Lottery, Applicants Against Lottery Abuse, Cellular Applicants' Coalition, Miller Communications, Inc., Skywave Partners, Inc., Buckhead Cellular Communications Partnership, and ZDT Partnership (collectively, the "Petitioners"), we submit herewith an original and fourteen (14) copies of Petitioners' Joint Motion for Rulings on Settlement Agreements or, Alternatively, for Approval and Partial Waiver in CC Docket No. 91-142.

Should there be any questions concerning this submission, please contact the undersigned counsel for Thomas Domencich and the Committee for a Fair Lottery.

Very truly yours,



E. Ashton Johnston
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEB - 5 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	CC DOCKET NO. 91-142
)	
ALGREG CELLULAR ENGINEERING)	File No. 10607-CL-P-307-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 307, Alabama 1-Franklin)	
)	
CRANFORD CELLULAR COMMUNICATIONS)	File No. 10611-CL-P-311-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 311, Alabama 5-Cleburne)	
)	
BAY CELLULAR OF FLORIDA)	File No. 10754-CL-P-497-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 497, Mississippi 5-Washington)	
)	
FLORIDA CELLULAR)	File No. 10445-CL-P-505-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 505, Missouri 2-Harrison)	
)	
A-1 CELLULAR COMMUNICATIONS)	File No. 10454-CL-P-514-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 514, Missouri 11-Moniteau)	
)	
BRAVO CELLULAR)	File No. 10673-CL-P-579-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 579, North Carolina 15-Cabarrus)	
)	
CEL-TEL COMMUNICATIONS)	File No. 10912-CL-P-589-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 589, Ohio 5-Hancock)	

EJM CELLULAR PARTNERS

For facilities in the Domestic Public Cellular
Telecommunications Radio Service on Frequency
Block A, in Market 596, Oklahoma 1-Cimarron

PINELLAS COMMUNICATIONS

For facilities in the Domestic Public Cellular
Telecommunications Radio Service on Frequency
Block A, in Market 613, Pennsylvania 2-McKean

CENTAUR PARTNERSHIP

For facilities in the Domestic Public Cellular
Telecommunications Radio Service on Frequency
Block A, in Market 631, South Carolina 7-Calhoun

SIGNAL CELLULAR COMMUNICATIONS

For facilities in the Domestic Public Cellular
Telecommunications Radio Service on Frequency
Block A, in Market 632, South Carolina 8-Hampton

A-1 CELLULAR COMMUNICATIONS

For facilities in the Domestic Public Cellular
Telecommunications Radio Service on Frequency
Block A, in Market 661, Texas 10-Navarro

EJM CELLULAR PARTNERS

For facilities in the Domestic Public Cellular
Telecommunications Radio Service on Frequency
Block A, in Market 721, Wyoming 4-Niobrara

To: The Commission

) File No. 10567-CL-P-596-A-89

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

) File No. 10808-CL-P-613-A-89

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**JOINT MOTION FOR RULINGS REGARDING SETTLEMENT AGREEMENTS
OR, ALTERNATIVELY, FOR APPROVAL AND PARTIAL WAIVER**

February 5, 1999

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SUMMARY

The Petitioners in the captioned-proceeding (the “Consolidated Proceeding”) submit this Joint Motion for Rulings Regarding Settlement Agreements or, Alternatively, for Approval and Partial Waiver (the “Joint Motion”) with respect to thirteen separate settlement agreements entered into between the Petitioners and other parties to the Consolidated Proceeding, each of whom filed a cellular application that has been granted by the Commission (the “Grantees”).

The settling parties have executed definitive settlement agreements that resolve all outstanding litigation between them and call for the dismissal of all pending petitions for reconsideration and other filings they have submitted in this proceeding. Consequently, all outstanding litigation among and between the parties to the Consolidated Proceeding, and all foreseeable litigation among and between the settling parties arising out of the Consolidated Proceeding, will be resolved by the settlements.

Consistent with Commission rules and governing precedent, no approval of the settlement agreements between Petitioners and Grantees is required, and the provisions of Section 22.129 of the Commission’s rules, which were adopted after the Grantees’ applications were filed, are not applicable. Petitioners respectfully request a ruling to this effect. Should the Commission nonetheless determine that Section 22.129, rather than former rule Section 22.29, applies to the settlement agreements, Petitioners request that the Commission approve the settlements and waive the limitation on settlement amounts set forth in Section 22.129. A waiver is clearly justified in light of the circumstances of this unprecedented proceeding. There are unique and compelling arguments that support the grant of this Joint Motion by ruling that Section 22.129 does not apply to the agreements or, alternatively, approving the settlements and waiving in part Section 22.129.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Applications of) CC DOCKET NO. 91-142
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For facilities in the Domestic Public Cellular)
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Block A, in Market 613, Pennsylvania 2-McKean)
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CENTAUR PARTNERSHIP) File No. 10720-CL-P-631-A-89
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For facilities in the Domestic Public Cellular)
Telecommunications Radio Service on Frequency)
Block A, in Market 631, South Carolina 7-Calhoun)
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SIGNAL CELLULAR COMMUNICATIONS) File No. 10721-CL-P-632-A89
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For facilities in the Domestic Public Cellular)
Telecommunications Radio Service on Frequency)
Block A, in Market 632, South Carolina 8-Hampton)
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A-1 CELLULAR COMMUNICATIONS) File No. 10409-CL-P-661-A-89
)
For facilities in the Domestic Public Cellular)
Telecommunications Radio Service on Frequency)
Block A, in Market 661, Texas 10-Navarro)
)
EJM CELLULAR PARTNERS) File No. 10116-CL-P-721-A-89
)
For facilities in the Domestic Public Cellular)
Telecommunications Radio Service on Frequency)
Block A, in Market 721, Wyoming 4-Niobrara)

To: The Commission

**JOINT MOTION FOR RULINGS REGARDING SETTLEMENT AGREEMENTS
OR, ALTERNATIVELY, FOR APPROVAL AND PARTIAL WAIVER**

Thomas Domencich, the Committee for a Fair Lottery ("CFL"), Applicants Against
Lottery Abuse ("AALA"), Miller Communications, Inc. ("Miller"), Skywave Partners, Inc.

("Skywave"), Buckhead Cellular Communications Partnership ("Buckhead"), Cellular Applicants' Coalition ("CAC"), and ZDT Partnership ("ZDT") (collectively, the "Petitioners"), by their respective attorneys, hereby submit this Joint Motion for Rulings Regarding Settlement Agreements or, Alternatively, for Approval and Partial Waiver (the "Joint Motion") with respect to thirteen separate settlement agreements entered into between the Petitioners and Alabama Wireless, Inc. (formerly Algreg Cellular Engineering) ("Algreg"), Ohio Wireless, L.L.C. (formerly Alpha Cellular) ("Alpha"), A-1 Cellular of Texas, L.P. (formerly A-1 Cellular Communications) ("A-1"), A-1 Cellular Communications, L.L.C. (formerly A-1 Cellular Communications) ("A-1"), Bay Cellular of Florida ("Bay"), Bravo Cellular, L.L.C. (formerly Bravo Cellular) ("Bravo"), Cel-Tel Communications of Ohio, Ltd. (formerly Cel-Tel Communications) ("Cel-Tel"), Centaur Partnership ("Centaur"), Cranford Cellular Communications, L.L.C. (formerly Cranford Cellular Communications) ("Cranford"), EJM Cellular, L.L.C. (formerly EJM Cellular Partners) ("EJM"), Florida Cellular ("Florida), Pinellas Communications ("Pinellas"), and South Carolina Cellular Corporation (formerly Signal Cellular Communications) ("Signal"). (Algreg, Alpha, A-1, Bay, Bravo, Cel-Tel, Centaur, Cranford, EJM, Florida, Pinellas, and Signal are referred to herein collectively as the "Grantees".)

The Petitioners hereby request that the Commission either rule that no approval of the settlement agreement entered into between Petitioners and each Grantee is required or, alternatively, approve each settlement agreement and waive in part certain provisions of Section 22.129 of the Commission's rules. In support hereof, the following is respectfully shown:^{1/}

^{1/} Under separate cover, Petitioners, Grantees and others have filed today with the Commission a Joint Notice of Settlement Agreements and Request for Rulings with respect to settlements entered into between the Petitioners and each Grantee.

I. Statement of Pertinent Facts

In 1988 and 1989, each Grantee filed applications (including the above-captioned applications) with the Commission requesting authorizations to provide Block A cellular service in various Rural Service Area ("RSA") markets. Each of the Petitioners also filed applications for some or all of the same RSA authorizations applied for by the Grantees.

On May 29, 1991, the Commission, acting pursuant to delegated authority, initiated a consolidated proceeding (the "Consolidated Proceeding") to determine, *inter alia*, the qualifications of the Grantees and others to hold cellular authorizations in the RSA markets for which each had been selected by lottery. Specifically, the Commission issued an Order designating the above-captioned applications of the Grantees for hearing and requiring certain Commission licensees to show cause why their cellular authorizations should not be revoked.^{2/}

On December 22, 1992, following extensive pre-trial proceedings and nearly two months of trial, Administrative Law Judge Walter C. Miller released an *Initial Decision* recommending, *inter alia*, that the above-captioned applications of the Grantees be denied.^{3/} The *Initial Decision* was upheld by the Review Board in a decision released July 22, 1994,^{4/} which immediately was appealed by parties to the proceeding.

On June 3, 1997, the full Commission released a *Memorandum Opinion and Order* ^{5/}

^{2/} *Algreg Cellular Engineering*, CC Docket No. 91-142, 6 FCC Rcd 2921 (CCB 1991) ("*Hearing Designation Order*").

^{3/} 7 FCC Rcd 8686 (ALJ 1992).

^{4/} *Algreg Cellular Engineering*, 9 FCC Rcd 5098, *recon. denied*, 9 FCC Rcd 6753 (Review Board 1994) ("*Review Board Decision*").

^{5/} 12 FCC Rcd 8148 (1997) ("*Commission MO&O*").

which, *inter alia*, (1) granted the above-captioned applications of Grantees Algreg, A-1, Bay, Cel-Tel, Cranford, Florida, Pinellas, and Signal;^{6/} (2) remanded for further consideration by the Wireless Telecommunications Bureau the applications of Grantees Bravo, Centaur, and EJM, upon submission of a clarifying amendment by Bravo and of certifications by Centaur and EJM;^{7/} (3) terminated the revocation portion of the Consolidated Proceeding with respect to Cellular Pacific, Crystal Communications Systems (“Crystal”), Data Cellular Systems (“Data”), Jaybar Communications (“Jaybar”), North American Cellular (“North American”), and Satellite Cellular Systems (“Satellite”) (collectively, the “Licensees”), each of which had been granted a license prior to the release of the *Hearing Designation Order*;^{8/} (4) conditionally granted an application of Alpha and conditionally reinstated a license previously granted to Alpha;^{9/} and (6) revoked the license of Alee Cellular Communications (“Alee”).^{10/}

On July 3, 1997, separate Petitions for Reconsideration of the Commission *MO&O* were filed by the Petitioners, by Alee, and by Licensees Cellular Pacific, Data, and North American. These petitions have not been acted upon by the Commission.

The Commission *MO&O* also disposed of requests for approval of settlement agreements entered into prior to the release of the *MO&O* between the Petitioners and Crystal and between

^{6/} Commission *MO&O* at para. 99.

^{7/} *Id.* at para. 100.

^{8/} *Id.* at para. 101.

^{9/} *Id.* at para. 103.

^{10/} *Id.* at para. 104.

the Petitioners and Alpha.^{11/} The Commission ruled that no approval was required because these two settlements involved licensees.^{12/}

Since the Commission released the *MO&O*, the Petitioners have entered into settlement agreements resolving litigation arising out of the Consolidated Proceeding with each of the remaining designated parties whose qualifications were at issue in the Consolidated Proceeding. On July 3, 1997, Petitioners notified the Commission that they had entered into settlement agreements with Grantees A-1 (Texas 10 RSA), Algreg, Bay, Bravo, Centaur, Pinellas, and Signal, and with Licensee Satellite. On August 8, 1997, Petitioners notified the Commission that additional settlements had been reached between Petitioners and Grantees A-1 (Missouri 11 RSA), Cel-Tel, Cranford, and EJM, and with Licensee Jaybar. Since August 8, 1997, Petitioners also have entered into settlement agreements with Grantee Florida, with Licensees Cellular Pacific, Data, and North American, and with Alee. Notice of these settlements — which, along with the prior settlements, manage to resolve all contested issues between parties of record in the Consolidated Proceeding — is being filed concurrently herewith.

Subject to Commission approval, Petitioners have agreed with each of the Grantees to compromise their respective claims and to settle their differences. The parties to each settlement

^{11/} Commission *MO&O* at para. 106.

^{12/} *Id.* at para. 89. The agreement between Petitioners and Alpha resolved disputes involving both a licensed RSA and a pending application of Alpha. As to the latter, the Commission ruled that it would hold the settlement in abeyance pending the submission of additional materials by the Petitioners. *Id.* at para. 94. Petitioners timely appealed this ruling. Petitioners hereby request that the Commission treat the settlement agreement between Petitioners and Alpha consistent with its disposition of this Joint Motion. The Petitioners have been advised by counsel for Alpha that Alpha does not oppose this request.

have executed a definitive settlement agreement that resolves all outstanding litigation between them. Under the terms of each settlement,^{13/} the Petitioners agree, with respect to each Grantee, not to further oppose, object to, protest, petition against or otherwise comment adversely upon or seek reconsideration or review of, or appeal the Commission's grant of the Grantee's application. In exchange, the Petitioners are to receive a payment from each Grantee. Furthermore, the settling parties have agreed to dismiss all pending petitions for reconsideration and other filings they have submitted in this proceeding. Consequently, all outstanding litigation among and between the parties to the Consolidated Proceeding, and all foreseeable litigation among and between the settling parties arising out of the Consolidated Proceeding, will be resolved by the settlements.^{14/}

As noted above, this Joint Motion pertains only to settlement agreements entered into by Petitioners and Grantees. Commission approval of settlement agreements entered into between

^{13/} Complete copies of the Settlement Agreements between Petitioners and each Grantee are included as Exhibits 1-A through 1-M hereto. Complete copies of the settlement agreements between the Petitioners and Licensees also are submitted herewith for informational purposes (see Exhibits 1-N through 1-Q), except for agreements between the Petitioners and Alpha with respect to the Ohio 2 RSA and between the Petitioners and Crystal, which were submitted to the Commission on October 20, 1994 and February 2, 1995, respectively. Petitioners note that conditions specified in their agreement with Cellular Pacific, Data, and North American have been satisfied or waived, and the agreement has become effective.

^{14/} Alee's Petition for Partial Reconsideration of the revocation of its license will remain pending before the Commission. William J. Franklin, who was not a party to the Consolidated Proceeding, filed a limited opposition to Alee's appeal. A timely filed petition for reconsideration of the Commission *MO&O* filed by another non-party to the Consolidated Proceeding also remains pending. See Petition for Reconsideration filed by A. Thomas Carroccio, Esq., July 3, 1997. A document bearing portions of the caption of the Consolidated Proceeding and the title "Statement for the Record" was submitted to the Commission on June 29, 1998 by Harry F. Cole, Esq.

Petitioners and Licensees Cellular Pacific, Data, Jaybar, North American, and Satellite is not required. As the Commission noted in its *MO&O*, “Commission approval is not required for agreements to withdraw or dismiss pleadings filed against a licensee.” *MO&O*, para. 89.

II. The Commission Should Rule that Approval of the Settlement Agreements Is Not Required

The applications at issue in this proceeding were filed with the Commission in 1988 and 1989. Pleadings that were filed against the applications and gave rise to the designation order were filed in 1989 and 1990. At the time the applications and pleadings were filed, settlement agreements involving pending cellular applications were governed by Section 22.29 of the Commission’s rules. Former Section 22.29 encouraged parties to contested proceedings to settle their disputes among themselves and required parties to a settlement agreement involving pending cellular applications to notify the Commission when a party sought to dismiss or withdraw an application or pleading pursuant to a settlement agreement. **Former Section 22.29 placed no limit on the amount of consideration exchanged between settling parties.**

In 1994 — long after the issues in the Consolidated Proceeding were joined — the Commission amended its cellular service rules.^{15/} As a result of the 1994 amendments, former Section 22.29 was amended and renumbered as Section 22.129. With respect to settlements in cases involving a party dismissing a pleading against a pending cellular application, Section 22.129 requires Commission approval, and any party withdrawing or requesting dismissal of its application or pleading must submit affidavits and certifications stating, *inter alia*, that the

^{15/} See *Revision of Part 22 of the Commission’s Rules Governing the Public Mobile Services*, CC Docket No. 92-115, *Report and Order*, 9 FCC Rcd 6513 (1994).

consideration to be received does not exceed the dismissing party's legitimate and prudent expenses incurred in preparing and prosecuting the application or pleading.^{16/}

Under applicable Commission rules and precedent, former rule Section 22.29 governs the settlement agreements between the Petitioners and the Grantees. Section 22.959 of the rules provides clear guidance on the question of which rules apply when there has been a substantive change in the rules. Section 22.959 states:

Pending applications for authority to operate the first cellular system on a channel block in an ... RSA market continue to be processed under the rules governing the processing of such applications that were in effect when those applications were filed, unless the Commission determines otherwise in a particular case.

Section 22.959 was adopted in the *Part 22 Rewrite Order* in 1994, when numerous cellular applications filed under the former rules (including the above-captioned applications) remained pending before the Commission. Thus, it is abundantly clear that in adopting Section 22.959 the Commission intended that then-pending cellular applications were to be processed under the former rules, "unless the Commission determines otherwise in a particular case."

The Commission consistently has followed Section 22.959 in processing cellular applications filed under the prior rules.^{17/} Indeed, in *Western California Cellular Partners and MTEL Cellular, Inc.*,^{18/} the Commission specifically determined that Section 22.959 applies in determining which version of the settlement rule should govern a proceeding. In that case, the

^{16/} 47 C.F.R. § 22.129(a).

^{17/} See, e.g., *Corporate Telecom Services, Inc.*, 8 CR 114 (May 12, 1997), n.6; *McElroy Electronic Corp.*, 1997 FCC LEXIS 1356 (WTB March 13, 1997), n.16.

^{18/} 11 FCC Rcd 5705 (WTB 1996) ("*Western California*").

Wireless Telecommunications Bureau determined that the purpose of Section 22.129, which replaced Section 22.29, would not be frustrated by applying the former rule because there was no evidence that the settling parties had filed applications and pleadings solely to extract settlement payments from other parties.^{19/}

Here, as in *Western California*, there is no evidence that any Grantee or Petitioner filed its application as part of a speculative venture. To the contrary, it is clear that the Petitioners — found by the Commission to have functioned throughout the Consolidated Proceeding effectively as “private attorneys general”^{20/} — prosecuted the case in good faith and not for the purpose of extracting money from other sincere applicants. At every stage of the Consolidated Proceeding, the Petitioners “vigorously prosecuted” their case.^{21/} For example, Petitioners (a) filed petitions to deny and petitions to revoke that brought to the attention of the Commission the basic facts that gave rise to the *Hearing Designation Order*; (b) conducted extensive document discovery that uncovered many of the critical documents cited in the *Initial Decision* and the Review Board *Decision* as evidence of various parties’ participation in the risk-sharing agreements that were the basis for the Consolidated Proceeding; (c) acted as lead counsel, or as major participating counsel, in approximately 50 depositions of fact witnesses prior to the hearing before the ALJ; (d) jointly submitted extensive trial exhibits, many of which were cited by the Presiding Judge and the Review Board in outlining the facts and circumstances surrounding the risk-sharing

^{19/} *Western California*, 11 FCC Rcd at 5707.

^{20/} Commission *MO&O* at para. 91.

^{21/} *Id.*

agreements; (e) fully participated in the trial phase of the proceeding, including direct examination and cross-examination of key witnesses; (f) prepared and filed extensive post-trial briefs, which, among other things, provided summaries on an applicant-by-applicant basis of the record evidence; (g) presented oral argument in the case before the Review Board; (h) filed briefs in the appeal of the Review Board *Decision*; and (i) have continued to participate in post-Commission *MO&O* proceedings. The fact that both the Administrative Law Judge and the Review Board ruled in favor of Petitioners in the proceeding establishes beyond doubt that the issues raised by Petitioners were not inconsequential. Moreover, the costs of Petitioners' efforts have been substantial. In the aggregate, Petitioners have incurred legal fees of nearly \$3 million during the course of the Consolidated Proceeding.

Consistent with Section 22.959 and with governing precedent, no approval of the Settlement Agreements is required, and the provisions of Section 22.129 of the Commission's rules, which were adopted after the Grantees' applications were filed, are not applicable to the settlement agreements between the Grantees and the Petitioners. Petitioners respectfully request a ruling to this effect.

**III. Alternatively, the Commission Should
Approve the Settlements and Grant a Partial Waiver of Section 22.129**

Should the Commission determine that current rule Section 22.129, rather than former rule Section 22.29, applies to settlement agreements involving Grantees in the Consolidated Proceeding, the Petitioners respectfully request that the Commission approve the settlements and waive the limitation on settlement amounts set forth in Section 22.129.

Section 22.129 requires parties to a settlement to certify that they have not paid or

received “any money or other consideration in excess of the legitimate and prudent expenses incurred in preparing and prosecuting the application, petition to deny, informal objection or other pleading in exchange for the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading....” 47 C.F.R. §§ 22.129(a)(1), (b)(1). In addition, the withdrawing or dismissing party must disclose the exact nature and amount of any consideration received or promised, an itemized accounting of the expenses for which it seeks reimbursement, and the terms of any oral agreement related to its withdrawal or dismissal. 47 C.F.R. §§ 22.129(a)(2)-(4). With respect to the settlements between Petitioners and Grantees, the exact nature and amount of all consideration to be received from each Grantee by the Petitioners, as well as all terms and conditions of the settlements, are fully set forth in the agreements that are included as attachments to this Joint Motion. Further, there are no agreements, oral or written, other than the agreements attached hereto, between any of the Grantees and the Petitioners. These representations are supported by Declarations from each Petitioner.^{22/} Declarations from each Grantee conforming to the requirements of Section 22.129(b) also are submitted herewith.^{23/}

Thus, the Petitioners seek a partial waiver of Section 22.129, (1) to the extent that Section 22.129(a)(1) limits the amount of consideration the Petitioners may receive from the Grantees to “legitimate and prudent expenses incurred ... in preparing and prosecuting” Petitioners’ pleadings

^{22/} See Exhibits 2-A through 2-G hereto.

^{23/} See Exhibits 3-A through 3-M hereto. Similar declarations with respect to settlements between Petitioners and Licensees Jaybar, Cellular Pacific, Data, and North American and between Petitioners and Alee also are submitted herewith as Exhibits 3-N through 3-R. The parties to settlements between Petitioners and Alpha and Crystal previously filed similar declarations.

in the Consolidated Proceeding, and (2) to the extent that Section 22.129(a)(3) requires Petitioners to submit an itemized accounting of such expenses. As reflected by the settlement agreements and Declarations submitted with this Joint Motion, the total consideration to be received by the Petitioners from the Grantees is \$4,164,805, the total amount of consideration to be received by the Petitioners under all of the settlement agreements they have entered into involving parties to the Consolidated Proceeding (i.e., from the Grantees, Licensees, Alee, Alpha, and Crystal) is \$6,300,573, and the Petitioners' collective legitimate and prudent expenses incurred in the course of the Consolidated Proceeding through mid-January, 1999 are \$3,124,633.13. As is set forth in Exhibit 4, to the extent that the settlement payments exceed the Petitioners' out-of-pocket expenses, the differential represents only a small fraction of the value of the authorizations that Petitioners were seeking in their applications. The distribution of settlement proceeds among the Petitioners has been determined by them based upon a calculation that takes into account each Petitioner's relative expenses incurred in prosecuting the Consolidated Proceeding and the number of markets in the proceeding for which each Petitioner or its constituent members filed applications.

Requests for waiver of cellular service rules may be granted by the Commission if it is shown that:

- (1) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (2) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or that the applicant

has no reasonable alternative.^{24/}

Both of these criteria are satisfied here.

The underlying purpose of Section 22.129 — to discourage applications and pleadings filed for the purpose of obtaining money from sincere applicants^{25/} — would not be served by applying the rule to the Settlement Agreements between the Petitioners and the Grantees. Petitioners, who themselves were applicants for the systems that are the subject of the Consolidated Proceeding, have assiduously pursued this case for more than nine years, and in the process already have expended more than \$3 million. The Commission already has recognized the importance and substance of Petitioners' contributions in the Consolidated Proceeding, characterizing it as “analogous to that of private attorneys general.”^{26/} As in *Western California* — where the Wireless Telecommunications Bureau found no basis for applying Section 22.129 and instead held that former Section 22.29 governed — “nothing in the history of this proceeding indicates that [the parties] applied for [the RSA authorizations] as part of a speculative venture.”^{27/} Moreover, again as in *Western California*, “applying [Section 22.129] will not deter speculative applications since no such applications remain to be filed for [these] markets,” and “a denial will actually prolong litigation in this matter, delay service to the public and have no effect on deterring the filing of speculative applications.”^{28/}

^{24/} 47 C.F.R. § 22.119(a).

^{25/} See *Western California*, 11 FCC Rcd at 5707.

^{26/} Commission *MO&O*, para. 91.

^{27/} *Western California*, 11 FCC Rcd at 5707.

^{28/} *Id.* at 5709.

A waiver also is justified due to changed circumstances beyond the control of Petitioners, who have attempted to preserve the integrity of the Commission's lottery processes with the goal of achieving a new lottery in which their applications would be included. Now, because of intervening federal legislation,^{29/} this goal cannot be achieved. Since the change in federal law has precluded the Petitioners from securing the relief they originally sought (i.e., a relottery) it is in the public interest to permit the Petitioners to withdraw from the proceeding on a mutually agreeable basis.

Significantly, the Commission has determined that a waiver of Section 22.129 was justified in similar circumstances. In *Public Mobile Service Lottery for 931 MHz Paging Channels*,^{30/} the Wireless Telecommunications Bureau waived Section 22.129, thereby permitting the parties to implement a settlement agreement and resolve lengthy and complex litigation.^{31/} The Bureau found no evidence that any of the petitioners in that case had filed pleadings for speculative reasons or to try to extract money from applicants. The Bureau concluded that "strictly applying the settlement rules will not serve the underlying purpose of [Section 22.129]."^{32/} The Bureau also found that a waiver would serve the public interest by

^{29/} Legislation enacted in 1997 rescinded the Commission's authority under Section 309(i) of the Communications Act of 1934, as amended, to issue licenses by lottery after July 1, 1997. Balanced Budget Act of 1997, P.L. 105-33, 111 Stat. 258, Section 3002(a)(2). Consequently, even if Petitioners were to continue to litigate this matter, they would not be rewarded by participation in relotteries of the RSA markets involved in the Consolidated Proceeding.

^{30/} 12 FCC Rcd 3027 (1997) ("*931 MHz Paging*").

^{31/} Because the applications at issue in *931 MHz Paging* were not cellular applications, Section 22.959 did not apply. Here, of course, Section 22.959 expressly states that former rule Section 22.29 governs.

^{32/} *931 MHz Paging*, 12 FCC Rcd at 3029.

resolving long-pending litigation and speeding service to the public.^{33/} The same conclusions apply to the instant settlements among parties to the Consolidated Proceeding, which has been as lengthy and complex as any litigation before the Commission in recent memory and has consumed more than nine years of the Commission's and the parties' time and resources.

Furthermore, although the consideration which the Grantees have agreed to pay the Petitioners exceeds, in the aggregate, the total expenses incurred to date by Petitioners in the Consolidated Proceeding, the total amount is by no means excessive. In fact, the total consideration is far below the expected value of Petitioners' applications for the cellular licenses at issue in the Consolidated Proceeding.^{34/} Under the circumstances, application of Section 22.129 would be unduly harsh.

Consequently, should the Commission determine that Section 22.129 applies to the instant settlement agreements, waiver of the rule as requested herein is justified.

IV. The Public Interest Will Be Served by Granting this Joint Motion

Commission policy favors the settlement of pending litigation.^{35/} Here, the Settlement Agreements entered into by Petitioners resolve disputes that have been extensively litigated for more than nine years. As a result of the settlement agreements among and between the Petitioners, the Grantees, and the Licensees, all of the remaining designated parties to the Consolidated Proceeding have resolved their disputes. Rather than burdening the Commission

^{33/} 931 MHz Paging, 12 FCC Rcd at 3029.

^{34/} See Declaration of Thomas Domencich, attached hereto as Exhibit 4.

^{35/} See, e.g., *RKO General, Inc.*, 3 FCC Rcd 5057, 5059 (1988).

with multiple filings in connection with the numerous settlements, which have been entered into over the course of a lengthy period, the parties to the agreements have cooperated to compile a single coordinated set of submissions containing the agreements and related materials.

A ruling by the Commission that Section 22.129 does not apply or should be waived would recognize the significant and useful role that Petitioners have played in bringing to the Commission's attention germane and pertinent information and in developing the extensive record in the Consolidated Proceeding. Approval of the settlement agreements at this stage of the proceeding is warranted because a full hearing record already has been developed. Further, a ruling that Section 22.129 does not apply or should be waived is in accord with Commission decisions in similar cases.^{36/} Finally, a ruling that Section 22.129 does not apply or should be waived would serve to acknowledge the important role of private attorneys general in preserving the integrity of the Commission's licensing processes. The magnitude of the Consolidated Proceeding is virtually unprecedented due to the large number of parties and markets involved, which has resulted in extraordinary expenses to the litigants. Action by the Commission approving the settlement agreements or waiving Section 22.129 is particularly appropriate in these circumstances.

All of the settlement agreements help to carry out the public interest dispositions the Commission has made in this case. No settlement calls for a resolution of a licensing issue in a manner different from the disposition by the Commission in the *MO&O*. Most of the settlement agreements were entered into after the Commission released its decision, and had the purpose of

^{36/} See *Western California, supra*; *931 MHz Paging, supra*.

bringing an end to litigation among the parties to the Consolidated Proceeding. That clearly is in the public interest.

In summary, Petitioners submit that there are unique and compelling arguments that support the grant of this Joint Motion by ruling that Section 22.129 does not apply to the settlement agreements or, alternatively, approving the settlements and waiving in part Section 22.129.

V. Conclusion

The rights and obligations of the Petitioners and Grantees under the settlement agreements are expressly subject to the condition that the Commission approve the settlements or, alternatively, rule that such approval is not required. Consequently, for good cause and consistent with the public interest as shown herein, Thomas Domencich, CFL, AALA, Miller, Skywave, Buckhead, CAC, and ZDT respectfully request that the Commission expeditiously either (1) rule that Section 22.129 does not apply to the Settlement Agreements, or, alternatively, (2) approve the settlements and grant a partial waiver of Section 22.129 consistent with this Joint Motion.

Respectfully submitted,

**Thomas Domencich
Committee for a Fair Lottery**

By: E. Ashton Johnston
Carl W. Northrop
E. Ashton Johnston

Paul, Hastings, Janofsky & Walker LLP
1299 Pennsylvania Avenue, N.W.
10th Floor
Washington, D.C. 20004-2400
(202) 508-9500

**Miller Communications, Inc.
Skywave Partners, Inc.**

By: Donald J. Evans/END
Donald J. Evans
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005
(202) 371-9500

Cellular Applicants' Coalition

By: James F. Ireland/END
James F. Ireland, III
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
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Applicants Against Lottery Abuse

By: Barry Gottfried/END
Barry Gottfried

Fisher, Wayland, Cooper,
Leader & Zaragoza L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006
(202) 296-6518

**Buckhead Cellular Communications
Partnership**

By: Richard S. Myers/END
Richard S. Myers
Myers Keller Communications
Law Group
1522 K Street, N.W., Suite 1100
Washington, D.C. 20005
(202) 371-0789

ZDT Partnership

By: William E. Zimsky/END
William E. Zimsky
Abadie & Zimsky, LLC
813 Main Avenue, Suite 303
Durango, CO 81301
(970) 385-4401

February 5, 1999

WDC-104323v5

EXHIBIT 1-A

**Settlement Agreement Between Petitioners
and A-1 Cellular Communications
(Texas 10 - Navarro RSA)**

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into as of the 1st day of July, 1997, by, among and between A-1 Cellular Communications ("Grantee") solely with respect to its below-described application for the specified market, on the one hand, and Thomas Domencich ("Domencich"), the Committee for a Fair Lottery ("CFL"), Applicants Against Lottery Abuse ("AALA"), Miller Communications, Inc. ("Miller"), Skywave Partners, Inc. ("Skywave"), Buckhead Cellular Communications Partnership ("Buckhead"), Cellular Applicants' Coalition ("CAC") and ZDT Partnership ("ZDT") (collectively, Domencich, CFL, AALA, Miller, Skywave, Buckhead, CAC and ZDT are referred to as the "Petitioners"), on the other hand. Each signatory hereto is referred to separately herein as a "Party" and collectively the signatories are referred to as the "Parties" to this Agreement.

RECITALS

A. WHEREAS Grantee submitted the following application (the "Application") to the Federal Communications Commission (hereinafter, the "Commission" which term shall be deemed to include all Bureaus, Divisions, the Review Board and other delegates of authority thereof) for an authorization to provide Block A cellular services in the following Rural Service Area ("RSA") market (hereinafter the "Market"):

File No. 10409-CL-P-661-A-89
Market No. 661, Texas 10 - Navarro;

B. WHEREAS the Commission granted the Application for the Market thereby approving the issuance of an authorization (the "Authorization") by Memorandum Opinion and Order, FCC 97-178, released June 3, 1997 (the "FCC Decision") in a consolidated proceeding (the "Consolidated Proceeding") in which the qualifications of numerous applicants and licensees including Grantee were in issue;

C. WHEREAS Petitioners are parties to the Consolidated Proceeding, have been adverse litigants with respect to the Application for the Market, and have certain rights of appeal (the "Appeal Rights") with respect to the FCC Decision;

D. WHEREAS Petitioners and Grantee desire to terminate their litigation with regard to the Application and have agreed to compromise their respective claims and settle their differences; and

E. WHEREAS the Commission encourages the settlement of licensing disputes to mitigate the expenses and delays associated with litigation.

THEREFORE, it is agreed as follows:

1. Settlement Payment. Subject to the terms and conditions set forth below, Grantee agrees to pay Petitioners the sum of \$525,825.00 (the "Payment") in consideration for the relinquishment by Petitioners of their Appeal Rights with respect to the Application.

2. Commission Approval. The Parties shall cooperate in good faith to secure a ruling from the Commission either (a) approving the Agreement and the Payment; or, (b) indicating that such approval is not required. Petitioners shall petition the Commission for a ruling that the settlement of an applicant market in the Consolidated Proceeding is not subject to Commission approval and/or not subject to any requirement that any resulting settlement payments not exceed the legitimate and prudent expenses of Petitioners, on the ground that settlements of applicant markets should be governed by the rules that were in effect at the time that the applications and initial objections were filed. In the alternative, Petitioners shall seek a ruling that approval of the Payment is in the public interest, and that any applicable limitation on such settlement payment be waived. Grantee shall not oppose, object to, protest, petition against or otherwise comment adversely upon, the Petitioners' request for such Commission ruling.

3. Modification of Payment by Commission Order. In the event of a Commission ruling disapproving the Payment to Petitioners in whole or in part, Petitioners shall have the right but not the obligation to exhaust their administrative and court remedies to overturn or modify the adverse ruling. If any such appeals are foregone or are ultimately unsuccessful, then the amount of the Payment due Petitioners from Grantee under this Agreement shall be reduced to such amount as the Commission may

approve by Final Order (as hereinafter defined) provided that Grantee has not breached the obligation of cooperation set forth in Paragraph 2 above. For purposes of this Agreement, the term Final Order shall mean an order with respect to the Application, whether administrative or judicial, which, by lapse of time or otherwise, is no longer subject to reconsideration, review or appeal.

4. Payment Terms. The Payment shall be due and payable in immediately available funds on the earlier of (a) thirteen months after the commencement of service in the Market by Grantee from at least one cell site location (the "Service Date") provided that the grant of the Application has become a Final Order; (b) the date of consummation of an assignment, transfer of control or a sale of Grantee's right, title and interest in and to the Application or the Authorization for the Market, whether or not the grant of the original Application or of the subsequent assignment or transfer of control application is a Final Order; (c) the execution of a settlement agreement between Grantee and any third party pursuant to which Grantee agrees to relinquish its claims in the Consolidated Proceeding with respect to the Market, to dismiss the Application, to turn in any Authorization or otherwise to abandon those rights it may have in the Market; or (d) the date on which the grant of the Application becomes a Final Order if such date is more than 13 months after the Service Date. Interest shall accrue on unpaid sums at an annual rate of 10% from the date of this Agreement. Grantee shall be deemed relieved of the obligation to

make the Payment if none of the conditions set forth in subparagraphs 4(a) (b) (c) and (d) of this section are satisfied.

5. Most Favored Nation. If Petitioners agree to settle with another applicant or licensee that is a party to the Consolidated Proceeding at a price that is less than \$1.71 times the population of the newly settled RSA (calculated using the 1996 population figures compiled by Donaldson, Lufkin and Jenrette) then the Payment due to Petitioners by Grantee shall be reduced to an equivalent "per pop" figure based upon 307,500 market pops for the Market.

6. Forbearance of Petitioners. Except as otherwise explicitly contemplated by this Agreement, Petitioners shall not further oppose, object to, protest, petition against or otherwise comment adversely upon or seek reconsideration of, review or appeal the portion of the FCC Decision granting the Application. In the event of further proceedings with respect to the Application before the Commission upon further review, before the U. S. Court of Appeals for the District of Columbia Circuit pursuant to appeal, or before an administrative law judge pursuant to remand, Petitioners agree, subject to the understandings otherwise set forth in this Agreement, that they shall take no adverse position with reference to the Application. Specifically, and without limitation, Petitioners shall not oppose, object to, protest, petition against or otherwise comment adversely upon any assertion by which Grantee seeks to distinguish the factual and legal circumstances respecting

the Application from those of the other applicants or licensees in the Consolidated Proceeding. Petitioners further agree that none of them shall oppose, object to, protest, petition against or otherwise comment adversely upon any major modification, assignment, transfer, point-to-point microwave, FCC Form 489 or any other applications, notifications or filings by Grantee respecting the Application, the Authorization and the Market before the Commission and any other regulatory or judicial forum whatsoever, provided that Grantee is not in breach of the terms of this Agreement.

7. Preserved Claims. This Agreement shall not bar Petitioners from continuing to fully and diligently prosecute positions adverse to applicants and licensees other than Grantee and to the Application of Grantee other than its Application for the Market (i.e., File No. 10454-CL-P-514-A-89 with regard to Market 514, Missouri 11 - Moniteau (the "MO-11 Application")) in the Consolidated Proceeding. To the extent that there are common issues of fact and/or of law respecting Grantee and other applicants or licensees in the Consolidated Proceeding, or between the Application and the MO-11 Application it shall not be considered a breach of this Agreement for Petitioners to advocate that such facts and law warrant the dismissal of the applications of such other applicants and/or the revocation of the authorizations of such other licensees, or the dismissal of the MO-11 Application nor for Grantee to counter that such facts and law

do not warrant the dismissal of the Application or the revocation of the Authorization. In this regard, Grantee acknowledges that it has been informed by Petitioners that they intend to seek reconsideration of the FCC Decision to the extent that such decision grants the applications, or terminates the revocation proceeding, with regard to applicants or licensees who have not settled with the Petitioners, including the MO-11 Application.

8. Distribution of Settlement Proceeds. Grantee shall be deemed to have satisfied its payment obligations under this Agreement if it tenders the full amount then due by wire transfer or cashier's check to Paul, Hastings, Janofsky & Walker LLP as trustee, Bank of America, ABA#12100358, 525 South Flower Street, Los Angeles, CA 90071, account number 14599-04796 or such other law firm escrow account as the Petitioners may unanimously designate in writing to Grantee at least one business day prior to payment. The settlement proceeds shall be distributed among and between Petitioners pursuant to a separate agreement among them, and Petitioners shall indemnify Grantee and hold Grantee harmless with respect to any dispute among and between Petitioners regarding such distribution.

9. No Admissions. The Parties agree that this Agreement constitutes a compromise of disputed claims respecting the Authorization and the Application. Nothing contained herein is intended nor shall be construed as an admission by any Party of any

fact, principle of law or of the validity of any claim of any other Party.

10. Mutual General Releases. Upon Commission approval of this Agreement by Final Order or upon issuance of a ruling by Final Order that no such approval is required, and except as to such rights or claims as may be expressly created or preserved by this Agreement, each Party hereto, for its respective agents, employees, partners, principals, officers, directors, legal representatives, parent corporation, subsidiaries, affiliates, predecessors, successors, and assigns, and for any partnerships, corporations, sole proprietorships or entities owned or controlled by it or under common control with it, as the case may be, forever and fully releases, remisses, quitclaims and forever discharges the other Parties hereto and those Parties' subsidiaries, affiliates, officers, directors, shareholders, employees, agents, lenders, investors, partners, limited partners, principals, representatives, parent corporations, insurers, sureties, attorneys, successors, and assignees, from any and all actions, causes of action, petitions to deny, objections, debts, sums of money, warranties, torts, injuries, losses, claims, demands, damages, attorneys' fees, costs, and other relief of any nature whatsoever whether known or unknown, whether in law, in equity, under any federal, state, or local laws, regulations, rules, or ordinances, including without limitation the Communications Act of 1934, as amended, and the Rules and Regulations of the Federal Communications Commission, before any

courts, administrative agencies or departments, that the Parties ever had, now have, or hereafter can, shall or may have arising out of or in any way relating to the disputes or allegations of fact which were or could have been alleged in, or which are otherwise related to the Consolidated Proceeding. This Release is not intended and shall not be construed to bar any claim seeking to enforce any Parties' rights under this Agreement nor any claim which is expressly preserved pursuant to this Agreement. This Release is not intended to and shall not be construed to bar any claim against any person that has held interim or permanent operating authority to serve the Market during the pendency of the Consolidated Proceeding. The Parties will cooperate and take such steps as are reasonable in light of the respective rights to the Parties by this Agreement, in an effort to cause the grant of the Authorization for the Market to Grantee to become a Final Order as soon as practicable.

11. Further Assurances. The Parties will execute all such further and additional documents, if any, as shall be reasonable or desirable to carry out the provisions of this Agreement, and shall participate through counsel in any meetings with Commission staff as are reasonable or desirable to further the objectives of this Agreement. The Parties will cooperate and take such steps as are reasonable in light of the respective rights to the Parties by this Agreement, in an effort to cause the grant of the Authorization for

the Market to Tentative Grantee to become a Final Order as soon as practicable.

12. Representations and Warranties. (a) The Parties represent and warrant, which representations and warranties shall survive the execution of this Agreement, that they each have full power and authority to execute and perform this Agreement and, to the best of their knowledge, their execution, delivery and performance of and compliance with the terms and provisions of this Agreement will not conflict with, result in a breach of, or cause a default under, any organizational agreement or any material agreements or instruments by which they are bound, nor will they conflict with or violate any statute, law, rules, regulation, order, decree or judgment of any court or governmental authority which is binding upon them; (b) Petitioners represent and warrant that none of them nor any of their respective affiliates is now or ever has been a holder of interim or permanent operating authority in the Market.

13. Covenants of Grantee. Grantee affirmatively covenants that: (a) pending the making of the Payment, it shall not cause or allow to be caused an assignment or transfer of control of the Authorization or the sale of substantially all of the assets of the Grantee's business in the Market or the assignment or transfer of any rights of Grantee with respect to the Authorization or the Application except for (i) a pro forma assignment or transfer of control, as those terms are defined by the Commission, in which the

assignee or transferee, as the case may be, agrees in writing to assume the obligations of Grantee to Petitioners under this Agreement or (ii) an assignment, transfer of control or sale of assets to a third party pursuant to an agreement in which the third party acknowledges the obligations of Grantee to Petitioners under this Agreement and makes adequate provisions for required payments to be made to Petitioners at the consummation of the transaction contemplated by such agreement; (b) Grantee shall, within 5 business days after a Commission ruling approving this Agreement, or determining that no such approval is required, execute a promissory note in form and substance reasonably satisfactory to the Petitioners as evidence of the obligation to make the Payment to Petitioners (c) Grantee covenants and agrees that no distribution of monies, whether derived from loans, operations or other sources, shall be made to the interestholders of Grantee while any portion of the Payment due Petitioners remains outstanding unless a simultaneous payment on the obligation to Petitioners is made in an amount greater than or equal to the aggregate amount of the payments to the interestholders of Grantee.

14. Covenants of Certain Petitioners. CFL, AALA and CAC, whose members have not been identified to Grantee, shall, within a reasonable time after execution of this Agreement by the Parties hereto, make a complete list of all their members available to a mutually agreeable third party (the "Custodian"). Such list shall identify any and all individuals or entities (together with all

constituent participants in any such entity, including without limitation all officers, directors, partners or 5% or greater stockholders), and for any parent corporation or partnership with a 5% or greater ownership, which are now or ever have been members of CFL, AALA or CAC, in their own name or through any related or affiliated enterprise. The Custodian shall treat the list as confidential and not disclose the identity of the listed members and participants to any third party (including Grantee or Grantee's counsel), or include the list in any public document, except as provided in this paragraph. If an adverse filing is made against Grantee by a person which would constitute a violation of this Agreement if made by a Petitioner, or if any person makes a solicitation to Grantee to do any sort of business which Grantee might not be inclined to pursue or accept if such person was a member or affiliate of CFL, AALA and CAC, Grantee shall be entitled to receive prompt written confirmation from the Custodian as to whether that person is a member or affiliate of CFL, AALA and CAC based upon the information supplied to the Custodian. Petitioners shall be obligated to pay the fees of the Custodian. Petitioners will provide to Grantee an affidavit certifying that the Custodian has been provided with all of the information required in this paragraph.

15. Entire Agreement. This Agreement constitutes the entire agreement between the Parties governing the matters

addressed. No prior agreement or representation, whether verbal or written, shall have any force or effect.

16. Remedies. In the event any Party initiates any proceeding or action to enforce rights or obligations under this Agreement, the prevailing Party in such proceeding or action shall be entitled to receive, in addition to such other relief as may be granted, a reimbursement of all costs incurred in connection with such proceeding or action, including reasonable attorneys fees.

17. Execution Procedures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Agreement shall not be effective unless and until all Parties have duly executed and delivered this Agreement. For purposes of this Agreement, the exchange of signature pages by facsimile transmission shall be deemed effective. The Parties acknowledge and agree that execution of this Agreement by counsel of record in the Consolidated Proceeding to a Party shall be deemed effective to bind such Party with the further understanding that such signature will be ratified by the signature of a principal of the Party within a reasonable time.

18. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each Parties' respective successors and permitted assigns.

19. Notices. Any notifications under this Agreement shall be deemed effective on the first business day after the date such

notification is sent by hand delivery or by a nationally recognized overnight delivery carrier (e.g. Federal Express) to the counsel of record for such Party in the Consolidated Proceeding, provided however that any Party may, by written notice to all other Parties, change its identified representative for the receipt of notices.

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GOODRICH & SHERWOOD

PAGE 02

FROM D. B. & R. LLP WASHINGTON, D. C.

(WED) 7. 2 '97 15:02/ST. 14:48/NO. 4261338398 P 17
NO. 1342 P. 47

IN WITNESS WHEREOF, the Parties, by their respective duly
authorized representatives, have executed this Agreement as of the
day and the year last below written.

ROCKHOUND CELLULAR
COMMUNICATIONS PARTNERSHIP

By: _____

Title: _____

Date: _____

THOMAS DOONICK AND
COMMITTEE FOR A FAIR LOTTERY

By: _____

Title: _____

Date: _____

CELLULAR APPLICANTS'
COALITION

By: _____

Title: _____

Date: _____

APPLICANTS AGAINST LOTTERY
ABUSE

By: _____

Title: _____

Date: _____

MILLER COMMUNICATIONS, INC.

By: _____

Title: _____

Date: _____

XYZ PARTNERSHIP

By: _____

Title: _____

Date: _____

A-1 CELLULAR COMMUNICATIONS

By: Richard W. BallTitle: General PartnerDate: July 2, 1997

KEYWAVE PARTNERS, INC.

By: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement as of the day and the year last below written.

BUCKHEAD CELLULAR
COMMUNICATIONS PARTNERSHIP

By: [Signature]

Title: Partner

Date: 7/3/97

THOMAS DOMENCICH AND
COMMITTEE FOR A FAIR LOTTERY

By: _____

Title: _____

Date: _____

CELLULAR APPLICANTS'
COALITION

By: _____

Title: _____

Date: _____

APPLICANTS AGAINST LOTTERY
ABUSES

By: _____

Title: _____

Date: _____

MILLER COMMUNICATIONS, INC.

By: _____

Title: _____

Date: _____

ZDT PARTNERSHIP

By: _____

Title: _____

Date: _____

A-1 CELLULAR COMMUNICATIONS

By: _____

Title: _____

Date: _____

SKYWAVE PARTNERS, INC.

By: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement as of the day and the year last below written.

BUCKHEAD CELLULAR
COMMUNICATIONS PARTNERSHIP

By: _____

Title: _____

Date: _____

THOMAS DOMENCICH AND
COMMITTEE FOR A FAIR LOTTERY

By: Thomas Domencich

Title: Partner

Date: 7-3-97

CELLULAR APPLICANTS'
COALITION

By: _____

Title: _____

Date: _____

APPLICANTS AGAINST LOTTERY
ABUSES

By: _____

Title: _____

Date: _____

MILLER COMMUNICATIONS, INC.

By: _____

Title: _____

Date: _____

ZDT PARTNERSHIP

By: _____

Title: _____

Date: _____

A-1 CELLULAR COMMUNICATIONS

By: _____

Title: _____

Date: _____

SKYWAVE PARTNERS, INC.

By: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement as of the day and the year last below written.

BUCKHEAD CELLULAR
COMMUNICATIONS PARTNERSHIP

By: _____

Title: _____

Date: _____

THOMAS DOMENCICH AND
COMMITTEE FOR A FAIR LOTTERY

By: _____

Title: _____

Date: _____

CELLULAR APPLICANTS'
COALITION

By: _____

Title: George Ring

Date: 16 July 1997

APPLICANTS AGAINST LOTTERY
ABUSES

By: _____

Title: _____

Date: _____

MILLER COMMUNICATIONS, INC.

By: _____

Title: _____

Date: _____

ZDT PARTNERSHIP

By: _____

Title: _____

Date: _____

A-1 CELLULAR COMMUNICATIONS

By: _____

Title: _____

Date: _____

SKYWAVE PARTNERS, INC.

By: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement as of the day and the year last below written.

BUCKHEAD CELLULAR
COMMUNICATIONS PARTNERSHIP

By: _____

Title: _____

Date: _____

CELLULAR APPLICANTS'
COALITION

By: _____

Title: _____

Date: _____

MILLER COMMUNICATIONS, INC.

By: _____

Title: _____

Date: _____

A-1 CELLULAR COMMUNICATIONS

By: _____

Title: _____

Date: _____

THOMAS DOMENCICH AND
COMMITTEE FOR A FAIR LOTTERY

By: _____

Title: _____

Date: _____

APPLICANTS AGAINST LOTTERY
ABUSES

By: C. Edward Massaro

Title: Officer of General Partner

Date: 7/24/97

ZDT PARTNERSHIP

By: _____

Title: _____

Date: _____

SKYWAVE PARTNERS, INC.

By: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement as of the day and the year last below written.

BUCKHEAD CELLULAR
COMMUNICATIONS PARTNERSHIP

By: _____

Title: _____

Date: _____

THOMAS DOMENCICH AND
COMMITTEE FOR A FAIR LOTTERY

By: _____

Title: _____

Date: _____

CELLULAR APPLICANTS'
COALITION

By: _____

Title: _____

Date: _____

APPLICANTS AGAINST LOTTERY
ABUSES

By: _____

Title: _____

Date: _____

MILLER COMMUNICATIONS, INC.

By: Thomas J. Walcott Pres

Title: PRESIDENT

Date: 2/14/97

ZDT PARTNERSHIP

By: _____

Title: _____

Date: _____

A-1 CELLULAR COMMUNICATIONS

By: _____

Title: _____

Date: _____

SKYWAVE PARTNERS, INC.

By: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement as of the day and the year last below written.

BUCKHEAD CELLULAR
COMMUNICATIONS PARTNERSHIP

By: _____

Title: _____

Date: _____

CELLULAR APPLICANTS'
COALITION

By: _____

Title: _____

Date: _____

MILLER COMMUNICATIONS, INC.

By: _____

Title: _____

Date: _____

A-1 CELLULAR COMMUNICATIONS

By: _____

Title: _____

Date: _____

THOMAS DOMENCICH AND
COMMITTEE FOR A FAIR LOTTERY

By: _____

Title: _____

Date: _____

APPLICANTS AGAINST LOTTERY
ABUSES

By: _____

Title: _____

Date: _____

ZDT PARTNERSHIP

By: W. J. J.

Title: Partner

Date: 7/2/97

SKYWAVE PARTNERS, INC.

By: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement as of the day and the year last below written.

BUCKHEAD CELLULAR
COMMUNICATIONS PARTNERSHIP

By: _____

Title: _____

Date: _____

THOMAS DOMENCICH AND
COMMITTEE FOR A FAIR LOTTERY

By: _____

Title: _____

Date: _____

CELLULAR APPLICANTS'
COALITION

By: _____

Title: _____

Date: _____

APPLICANTS AGAINST LOTTERY
ABUSES

By: _____

Title: _____

Date: _____

MILLER COMMUNICATIONS, INC.

By: _____

Title: _____

Date: _____

ZDT PARTNERSHIP

By: _____

Title: _____

Date: _____

A-1 CELLULAR COMMUNICATIONS

By: _____

Title: _____

Date: _____

SKYWAVE PARTNERS, INC.

By: *David C. Cushman*

Title: *President*

Date: *7-15-97*

EXHIBIT 1-B

**Settlement Agreement Between Petitioners
and A-1 Cellular Communications
(Missouri 11 - Moniteau RSA)**

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into as of the ____ day of August, 1997, by, among and between A-1 Cellular Communications ("Grantee"), on the one hand, and Thomas Domencich ("Domencich"), the Committee for a Fair Lottery ("CFL"), Applicants Against Lottery Abuse ("AALA"), Miller Communications, Inc. ("Miller"), Skywave Partners, Inc. ("Skywave"), Buckhead Cellular Communications Partnership ("Buckhead"), Cellular Applicants' Coalition ("CAC") and ZDT Partnership ("ZDT") (collectively, Domencich, CFL, AALA, Miller, Skywave, Buckhead, CAC and ZDT are referred to as the "Petitioners"), on the other hand. Each signatory hereto is referred to separately herein as a "Party" and collectively the signatories are referred to as the "Parties" to this Agreement.

RECITALS

A. WHEREAS Grantee submitted the following application (the "Application") to the Federal Communications Commission (hereinafter, the "Commission" which term shall be deemed to include all Bureaus, Divisions, the Review Board and other delegates of authority thereof) for an authorization to provide Block A cellular services in the following Rural Service Area ("RSA") market (hereinafter the "Market"):

File No. 10454-CL-P-514-A-89
Market No. 514, Missouri 11 - Moniteau;

B. WHEREAS the Commission granted the Application for the Market thereby approving the issuance of an authorization (the

"Authorization") by Memorandum Opinion and Order, FCC 97-178, released June 3, 1997 (the "FCC Decision") in a consolidated proceeding (the "Consolidated Proceeding") in which the qualifications of numerous applicants and licensees including Grantee were in issue;

C. WHEREAS Petitioners are parties to the Consolidated Proceeding, have been adverse litigants with respect to the Application for the Market, and have certain rights of appeal (the "Appeal Rights") with respect to the FCC Decision;

D. WHEREAS Petitioners and Grantee desire to terminate their litigation and have agreed to compromise their respective claims and settle their differences; and

E. WHEREAS the Commission encourages the settlement of licensing disputes to mitigate the expenses and delays associated with litigation.

THEREFORE, it is agreed as follows:

1. Settlement Payment. Subject to the terms and conditions set forth below, Grantee agrees to pay Petitioners the sum of \$255,303.00 (the "Payment") in consideration for the relinquishment by Petitioners of their Appeal Rights with respect to the Application and the Grantee.

2. Commission Approval. The Parties shall cooperate in good faith to secure a ruling from the Commission either (a) approving the Agreement and the Payment; or, (b) indicating that such approval is not required. Petitioners shall petition the

Commission for a ruling that the settlement of an applicant market in the Consolidated Proceeding is not subject to Commission approval and/or not subject to any requirement that any resulting settlement payments not exceed the legitimate and prudent expenses of Petitioners, on the ground that settlements of applicant markets should be governed by the rules that were in effect at the time that the applications and initial objections were filed. In the alternative, Petitioners shall seek a ruling that approval of the Payment is in the public interest, and that any applicable limitation on such settlement payment be waived. Grantee shall not oppose, object to, protest, petition against or otherwise comment adversely upon, the Petitioners' request for such Commission ruling.

3. Modification of Payment by Commission Order. In the event of a Commission ruling disapproving the Payment to Petitioners in whole or in part, Petitioners shall have the right but not the obligation to exhaust their administrative and court remedies to overturn or modify the adverse ruling. If any such appeals are foregone or are ultimately unsuccessful, then the amount of the Payment due Petitioners from Grantee under this Agreement shall be reduced to such amount as the Commission may approve by Final Order (as hereinafter defined) provided that Grantee has not breached the obligation of cooperation set forth in Paragraph 2 above. For purposes of this Agreement, the term Final Order shall mean an order with respect to the Application, whether

administrative or judicial, which, by lapse of time or otherwise, is no longer subject to reconsideration, review or appeal.

4. Payment Terms. The Payment shall be due and payable in immediately available funds on the earlier of (a) thirteen months after the commencement of service in the Market by Grantee from at least one cell site location (the "Service Date") provided that the grant of the Application has become a Final Order; (b) the date of consummation of an assignment, transfer of control or a sale of Grantee's right, title and interest in and to the Application or the Authorization for the Market, whether or not the grant of the original Application or of the subsequent assignment or transfer of control application is a Final Order; (c) the execution of a settlement agreement between Grantee and any third party pursuant to which Grantee agrees to relinquish its claims in the Consolidated Proceeding with respect to the Market, to dismiss the Application, to turn in any Authorization or otherwise to abandon those rights it may have in the Market; or (d) the date on which the grant of the Application becomes a Final Order if such date is more than 13 months after the Service Date. Interest shall accrue on unpaid sums at an annual rate of 10% from the date of this Agreement. Grantee shall be deemed relieved of the obligation to make the Payment if none of the conditions set forth in subparagraphs 4(a) (b) (c) and (d) of this section are satisfied.

5. Most Favored Nation. If Petitioners agree to settle with another applicant or licensee that is a party to the

Consolidated Proceeding at a price that is less than \$1.71 times the population of the newly settled RSA (calculated using the 1996 population figures compiled by Donaldson, Lufkin and Jenrette) then the Payment due to Petitioners by Grantee shall be reduced to an equivalent "per pop" figure based upon 149,300 market pops for the Market.

6. Forbearance of Petitioners. Except as otherwise explicitly contemplated by this Agreement, Petitioners shall not further oppose, object to, protest, petition against or otherwise comment adversely upon or seek reconsideration of, review or appeal the portion of the FCC Decision granting the Application. In the event of further proceedings with respect to the Application before the Commission upon further review, before the U.S. Court of Appeals for the District of Columbia Circuit pursuant to appeal, or before an administrative law judge pursuant to remand, Petitioners agree, subject to the understandings otherwise set forth in this Agreement, that they shall take no adverse position with reference to the Application and the Grantee. Specifically, and without limitation, Petitioners shall not oppose, object to, protest, petition against or otherwise comment adversely upon any assertion by which Grantee seeks to distinguish its factual and legal circumstances from those of the other applicants or licensees in the Consolidated Proceeding. Petitioners further agree that none of them shall oppose, object to, protest, petition against or otherwise comment adversely upon any major modification,

assignment, transfer, point-to-point microwave, FCC Form 489 or any other applications, notifications or filings by Grantee respecting the Application, the Authorization and the Market before the Commission and any other regulatory or judicial forum whatsoever, provided that Grantee is not in breach of the terms of this Agreement.

7. Preserved Claims. This Agreement shall not bar Petitioners from continuing to fully and diligently prosecute positions adverse to applicants and licensees other than Grantee in the Consolidated Proceeding. To the extent that there are common issues of fact and/or of law respecting Grantee and other applicants or licensees in the Consolidated Proceeding, it shall not be considered a breach of this Agreement for Petitioners to advocate that such facts and law warrant the dismissal of the applications of such other applicants and/or the revocation of the authorizations of such other licensees, nor for Grantee to counter that such facts and law do not warrant the dismissal of the Application or the revocation of the Authorization. In this regard, Grantee acknowledges that it has been informed by Petitioners that they intend to seek reconsideration of the FCC Decision to the extent that such decision grants the applications, or terminates the revocation proceeding, with regard to applicants or licensees who have not settled with the Petitioners.

8. Distribution of Settlement Proceeds. Grantee shall be deemed to have satisfied its payment obligations under this

Agreement if it tenders the full amount then due by wire transfer or cashier's check to Paul, Hastings, Janofsky & Walker LLP as trustee, Bank of America, ABA#12100358, 525 South Flower Street, Los Angeles, CA 90071, account number 14599-04796 or such other law firm escrow account as the Petitioners may unanimously designate in writing to Grantee at least one business day prior to payment. The settlement proceeds shall be distributed among and between Petitioners pursuant to a separate agreement among them, and Petitioners shall indemnify Grantee and hold Grantee harmless with respect to any dispute among and between Petitioners regarding such distribution.

9. No Admissions. The Parties agree that this Agreement constitutes a compromise of disputed claims respecting the Authorization and the Application. Nothing contained herein is intended nor shall be construed as an admission by any Party of any fact, principle of law or of the validity of any claim of any other Party.

10. Mutual General Releases. Upon Commission approval of this Agreement by Final Order or upon issuance of a ruling by Final Order that no such approval is required, and except as to such rights or claims as may be expressly created or preserved by this Agreement, each Party hereto, for its respective agents, employees, partners, principals, officers, directors, legal representatives, parent corporation, subsidiaries, affiliates, predecessors, successors, and assigns, and for any partnerships, corporations,

sole proprietorships or entities owned or controlled by it or under common control with it, as the case may be, forever and fully releases, remisses, quitclaims and forever discharges the other Parties hereto and those Parties' subsidiaries, affiliates, officers, directors, shareholders, employees, agents, lenders, investors, partners, limited partners, principals, representatives, parent corporations, insurers, sureties, attorneys, successors, and assignees, from any and all actions, causes of action, petitions to deny, objections, debts, sums of money, warranties, torts, injuries, losses, claims, demands, damages, attorneys' fees, costs, and other relief of any nature whatsoever whether known or unknown, whether in law, in equity, under any federal, state, or local laws, regulations, rules, or ordinances, including without limitation the Communications Act of 1934, as amended, and the Rules and Regulations of the Federal Communications Commission, before any courts, administrative agencies or departments, that the Parties ever had, now have, or hereafter can, shall or may have arising out of or in any way relating to the disputes or allegations of fact which were or could have been alleged in, or which are otherwise related to the Consolidated Proceeding. This Release is not intended and shall not be construed to bar any claim seeking to enforce any Parties' rights under this Agreement nor any claim which is expressly preserved pursuant to this Agreement. This Release is not intended to and shall not be construed to bar any claim against any person that has held interim or permanent